IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIFTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 5264 of 1996

Between:

Supreme Non-Ferrous Metal Industries,

S.C.No.156, Garten Road, Timmapur,

Mahaboobnagar District, represented

By its Director

..... PETITIONER

AND

1. The Chief Engineer, E;lectrical,

Hyderabad Zone, A.P.S.E.Board,

Hyderabad.

2. The Superintending Engineer,

Assessments, A.P.S.E.Board,

6-3-347/17/11-A, Dwarakapuri Colony,

Panjagutta, Hyderabad.

3. The Assistant Divisional Engineer,

Operation, A.P.S.E.Board, Shadnagar,

Mahaboobnagar District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issued an appropriate Writ, order or direction more particularly one in the nature of

Mandamus declaring the action of the respondents in levying a penalty of Rs.93,685-70ps pursuant to order No.SEA/HYD/F.MHP 131/SAT 5302 dated 26-08-1995 of the 2nd respondent as confirmed in the order of the 1st respondent in Appeal 21 of 95 dated 31-01-1996 as illegal, arbitrary and without jurisdiction and consequently set aside the same.

Counsel for the Petitioner : Mr.B.ADINARAYANA RAO

Counsel for the Respondents: SMT. M. Vinobha Devi, Standing Counsel for APSEB

The Court made the following :

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 5264 of 1996

ORDER:

Heard the learned Counsel for the petitioner and also the learned Standing Counsel appearing on behalf of the respondents.

The petitioner, which is an SSI Unit, files this writ petition *inter alia*, challenging the impugned order of the 2nd respondent herein dated 26.08.1995, making a demand of Rs.93,685.70 Ps., as confirmed in the appeal by the 1st respondent herein dated 31.01.1996 as illegal.

The case of the petitioner, in brief, is as follows:

The petitioner is an SSI unit and engaged in production of plastic containers. In pursuance of the inspection made on 15.11.1993 on the allegation of malpractice, a provisional assessment notice was served on the petitioner on 04.12.1993 demanding it to pay loss sustained by the respondents and accordingly, the amount was paid in instalments. Thereafter, a show cause notice was served on the petitioner on 30.09.1994, for which a representation was made by it on 06.03.1995 seeking time for submitting explanation. But the 2nd respondent without granting any time to the petitioner, sent the impugned order dated 26.8.1995, which was confirmed by the 1st respondent.

The learned Counsel appearing on behalf of the petitioner submits that no opportunity was given to the petitioner and apart from that there was no malpractice

or irregularity on the part of the petitioner and hence, the impugned proceedings are totally vitiated.

The learned Standing Counsel appearing on behalf of the respondents submits that having regard to the finding of the fact arrived at it is not open to the petitioner to assail the same. Hence, there are no merits in the writ petition and the same is liable to be dismissed.

Considering the submissions made and on perusal of the record, it is seen that the inspection was made as long back as on 15.11.1993 and a final assessment was struck at Rs.92,867-60 ps. Admittedly, there was no proper enquiry by the department and no opportunity was given to the petitioner when it sought for extension of time for filing explanation. Be that as it may, the fact remains that there have been certain irregularities as found by both the authorities, which are not open to assail the same under Article 226 of the Constitution of India. However, even by taking into consideration the facts and circumstances, the amount as demanded cannot be said to be reasonable and in the interest of justice, it can be reduced.

In view of the same, the Writ Petition is partly allowed confirming the orders of both the authorities. However, the amount of demand is reduced from Rs.93,685.70 Ps to Rs.46,842.85 Ps. It is needless to mention that any amounts paid in the meanwhile shall be given credit to. No costs.

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25th November, 2004

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That Rule Nisi has been made absolute as above.

Witness Hon'ble Sri Devinder Gupta, the Chief Justice, on this

Thursday, the Twenty Fifth day of Novemebr, Two Thousand and Four.

To

1. The Chief Engineer, Electrical,

Hyderabad Zone, A.P.S.E.Board,

Hyderabad.

2. The Superintending Engineer,

Assessments, A.P.S.E.Board,

6-3-347/17/11-A, Dwarakapuri Colony,

Panjagutta, Hyderabad.

3. The Assistant Divisional Engineer,

Operation, A.P.S.E.Board, Shadnagar,

Mahaboobnagar District.

4. Two CD copies.